

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

SUSAN DECUYPER,)
Plaintiff,)
v.)
AMY CORS FLINN, ROBERT DAVID) Case No.: 3:13-cv-00850
NEBEL, and JOY POLLOCK NEBEL,)
Defendants.)

RESPONSE OF AMY CORS FLINN, ROBERT DAVID NEBEL, AND JOY POLLOCK
NEBEL IN OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT

Defendants Amy Cors Flinn, Robert David Nebel, and Joy Pollock Nebel oppose the Plaintiff's motion for entry of default.

The motion is premature. Under Rule 15(a)(3), F.R.C.P., responses to amended pleadings are to be filed within 14 days of service. However, if service is made pursuant to Rule 5(b)(2)(E), F.R.C.P. via electronic means, three days are added to the allocated time to respond. See Rule 6(d), F.R.C.P. If the deadline for acting falls on a Saturday or Sunday, the “period continues to run until the end of the next day that is not Saturday [or] Sunday ...” See Rule 6(a)(1)(C), F.R.C.P.

Plaintiff served her Amended Complaint on November 6, 2013 via electronic notice. Pursuant to Rules 15(a)(3) as extended by Rule 6(d), the deadline for responding fell on Saturday, November 23, 2013. Because November 23, 2013 was a Saturday, Rule 6(a)(1)(C) extended the period for timely responding to Monday, November 25, 2013.

Plaintiff's 25-page, 135-plus paragraph Amended Complaint added the Hampton Reserve Homeowners Association as an "involuntary plaintiff" and also named Sue Ruta as a new defendant. Representation of the new defendant had to be verified by defense counsel, which was just accomplished on Wednesday, November 20. Today, plaintiff "nonsuited" the Association, thus changing the scope of her complaint yet again. It is clear defendants are active and engaged in defending this evolving case, and default, even if it had been technically available, would not have been appropriate.

Out of an abundance of caution, and due to the length and scope of the plaintiff's amended complaint, defendants will file a Motion for a brief extension to file a timely response to the amended complaint.

Defendants Flinn and Nebel respectfully submit that entry of default is improper as the properly calculated deadline for responding to the amended complaint is Monday, November 25, 2013.

Respectfully submitted,

/s/ Neil M. McIntire
Neil M. McIntire, Esq. #19860
HOWELL & FISHER, PLLC
300 James Robertson Parkway
Nashville, TN 37201-1107
Ph: 615-244-3370
Attorney for defendants,
Amy Cors Flinn, Robert David Nebel,
and Joy Pollock Nebel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 24th day of November 2013 a true and correct copy of the foregoing has been forwarded via the court's electronic filing system to:

Scott Johannessen, Esq.
Law Offices of Scott D. Johannessen
3200 West End Avenue, Suite 500
Nashville, TN 37203

/s/ Neil M. McIntire
